

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DANIEL KLEEGERG, LISA STEIN,
and AUDREY HAYS,

Plaintiffs,

vs.

Civil Action No. 16-CV-9517(LAK)(KDP)

LESTER EBER, ALEXBAY, LLC f/k/a
LESTER EBER, LLC., ELLIOT W. GUMAER,
JR. and WENDY EBER,

Defendants,

and

EBER BROS. & CO., INC., EBER
BROS. WINE AND LIQUOR
CORP., EBER BROS. WINE
& LIQUOR METRO, INC., EBER
CONNECTICUT, LLC, EBER-RHODE
ISLAND, LLC, EBER BROS. ACQUISITION
CORP, EBER-METRO, LLC, and SLOCUM &
SONS OF MAINE, INC.,

Nominal Defendants.

DECLARATION OF FRANK T. SANTORO

I, **FRANK T. SANTORO**, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following statements are true and correct to the best of my knowledge:

1. I am a member of the law firm of Farrell Fritz, P.C., attorneys for Defendants and Nominal Defendants (“Defendants”).

2. I respectfully submit this Declaration in opposition to Plaintiffs’ Motion to Exclude Evidence and Testimony pursuant to Rule 37 of the Federal Rules of Civil Procedure.

3. **Exhibit “A”** are true copies of documents produced in the course of discovery reflecting Michael Gallagher as a fact witness.

4. **Exhibit “B”** is a true copy of proposed Trial Exhibit DD, an Order of the Hon. Michael Telesca, dated January 19, 2016.

5. **Exhibit “C”** is a true copy of proposed Trial Exhibit QQ, namely PBGC Demand for Payment, dated March 29, 2016.

6. **Exhibit “D”** is a true copy of portions of proposed Trial Exhibit BBBB, the Notice of Funding Waiver Application to Employee Organizations, Participants, Beneficiaries and Alternate Payees and Waiver Application.

7. **Exhibit “E”** is a true copy of proposed Trial Exhibit JJ, namely, a letter from Michael Gallagher, dated December 19, 2018, re: plan termination liability.

8. **Exhibit “F”** is a true copy of proposed Trial Exhibit Y-7, namely, an email from Wendy Eber, dated August 29, 2014, to M. Gallagher regarding Plaintiff, D. Kleeberg’s benefits.

9. **Exhibit “G”** is a true copy of the Defendants’ Interrogatory Response and correspondence regarding same.

10. **Exhibit “H”** is a true copy of proposed Trial Exhibit X, namely the Decision & Order, dated April 15, 2005, of Hon. Kenneth R. Fisher in EWLC v. Southern Wine & Spirits of America, Inc. denying preliminary injunction.

11. **Exhibit “I”** is a true copy of proposed Trial Exhibit DDDD, PBGC Scratch Pad calculating Lester Eber’s pension benefit of the Eber Bros. Wine & Liquor Corp. Retirement Plan and January 10, 2014 e-mail referred to in Hon. Telesca’s Order.

12. **Exhibit “J”** is a true copy of proposed Trial Exhibit NNNN, the Eber Bros. Wine & Liquor Retirement Plan Financial Statements for 2012 and 2011 and Independent Auditors’ Report.

13. **WHEREFORE**, for the reasons set forth in the accompanying Memorandum of Law, I respectfully request that the Court deny the Plaintiffs’ Motion to Exclude Evidence and Testimony pursuant to Rule 37 of the Federal Rules of Civil Procedure.

Dated: Uniondale, New York
September 13, 2021

s/Frank T. Santoro
Frank T. Santoro